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HOUSE OF REPRESENTATIVES
REPORT
101-290

RESTRICTIVE EC BROADCASTING DIRECTIVE

OCTOBER 17, 1989.—Referred to the House Calendar and ordered to be printed

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Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H. Res. 257]

The Committee on Ways and Means, to whom was referred the resolution (H. Res. 257) denouncing the adoption by the European Community of a restrictive broadcasting directive, having considered the same, report favorably thereon with amendments and recommend that the resolution as amended be agreed to.

The amendments (stated in terms of the page and line numbers of the introduced resolution) are as follows:

In the first whereas clause strike "October 2, 1989," and insert "October 3, 1989,".

Page 2, line 2, strike "October 2, 1989," and insert "October 3, 1989,".

BACKGROUND

On October 3, 1989, the European Community (EC) Council of Ministers adopted a directive on television broadcasting, commonly referred to as the "Television Without Frontiers" directive. One provision of the directive obliges EC member states to take steps to ensure that each of its broadcasters reserves a majority of programming time for works of European origin.

This directive is one of the many directives designed to harmonize rules and standards within the Community as part of its "EC 1992" program. October 6 was the deadline for possible adoption of the broadcasting directive; if it had not been approved by the Council of Ministers by October 6, then the proposal would have lapsed. The Council had previously considered the directive at its June and July meetings, but there was insufficient support at those meetings for its adoption. At the October 3 meeting, only Belgium and Denmark opposed adoption; all other ten member states supported adoption.

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COMMITTEE ACTION

On March 20, 1989, the Subcommittee on Trade held a public hearing on the European Community program to complete its internal market consolidation by the end of 1992. This hearing was announced as the first in a series of hearings which the Subcommittee would hold on "Europe 1992". At the March 20 hearing, the Subcommittee received testimony from the Office of the U.S. Trade Representative, as well as from numerous private sector witnesses. Since the March hearing, the Subcommittee has had numerous consultations and briefings with representatives of the Administration on various developments related to the 1992 program. The Subcommittee has also met privately with various European officials during their visits to Washington, D.C., and sued those opportunities to discuss various issues, including the television broadcasting issue. The most recent example of such a meeting is the recent visit to Washington of the French Minister of Trade and Industry, with whom Subcommittee members had an extensive exchange of views specifically on the proposed television broadcasting directive.

On October 3, 1989, the Subcommittee on Trade was informed by Administration officials of the formal adoption of the television broadcasting directive by the EC Council of Ministers. Later that day, Trade Subcommittee Chairman Gibbons introduced H.Res. 257, along with Chairman Rostenkowski, and Representatives Jenkins, Downey, Pease, Russo, Gephardt, Guarini, Matsui, Archer, Crane, Vander Jagt, Schulze, Thomas of California, and Gilman as cosponsors. The resolution was referred to the Committee on Ways and Means, where it was referred to the Subcommittee on Trade.

On October 12, 1989, the Subcommittee on Trade convened in public session and considered H.Res. 257. The views of the Administration on the EC action were conveyed to the Subcommittee by Mr. Josh Bolten, General Counsel of the Office of the U.S. Trade Representative, who expressed the Administration's support for the objectives of H.Res. 257. An October 10, 1989, statement by U.S. Trade Representative Carla Hills on the EC adoption of the broadcasting directive and an October 11, 1989, letter from Mr. Jack Valenti of the Motion Picture Association of America expressing support for H.Res. 257 were both agreed to be included in the record. The Subcommittee then ordered the resolution favorably reported, with a technical amendment, by unanimous voice vote.

On October 17, 1989, the Committee on Ways and Means considered and ordered the resolution favorably reported with a technical amendment, by unanimous voice vote.

SECTION-BY-SECTION ANALYSIS, COMPARISON WITH PRESENT LAW, AND REASONS FOR CHANGE

Present law

Section 301 of the Trade Act of 1974, as amended, requires the U.S. Trade Representative to take action when the Trade Representative determines that rights of the United States under any trade agreement are being denied, or an act, policy, or practice of a foreign country violates, or is inconsistent with, the provisions of,

or otherwise denies benefits to the United States under, any trade agreement, or is unjustifiable and burdens or restricts United States commerce. Section 301 also authorizes the U.S. Trade Representative to take action in response to an act, policy, or practice of a foreign country that is unreasonable or discriminatory and burdens or restricts United States commerce.

There is no sense of the House in force relating to the consideration by the European Community of a television broadcasting directive.

Explanation of provision

The resolution calls attention to the inclusion in the EC broadcasting directive of a local content requirement, in the form of both a quota and a minimum floor for works of European origin, and denounces its adoption as trade restrictive and in violation of the General Agreement on Tariffs and Trade (GATT). It is the intent of the Committee that the criticism of the directive relates only to the local content requirement, and not to any other parts of the broadcasting directive.

With respect to GATT obligations, the resolution points to Article I of the GATT relating to most-favored-nation treatment and Article III relating to national treatment as the relevant portions of the GATT which are violated by the local content requirement.

The resolution further notes that the adoption of this restrictive and discriminatory directive is inconsistent with claims by EC officials that the "EC 1992" program is not a program of protectionism and will not deny market access to non-European entities. The resolution expresses the House's regret that the EC action will have adverse consequences on the U.S.-EC bilateral relationship as well as multilateral efforts underway in the Uruguay Round of GATT negotiations.

Under the resolution, the House strongly urges the President and the U.S. Trade Representative to take all appropriate and feasible action under its authority, including possible action under section 301 of the Trade Act of 1974, to protect and maintain U.S. access to the EC broadcasting market. The U.S. Trade Representative is requested to consult regularly with the Committee on Ways and Means on the status of the dispute and any action which it is considering with respect to the dispute.

In addition, the Clerk of the House is directed to transmit a copy of this resolution to appropriate EC officials. It is the intent of the Committee that the Clerk of the House transmit a copy of this resolution to the Head of Delegation of the Commission of the European Communities, resident in Washington, D.C., with a request that the Head of Delegation in turn transmit it to appropriate officials in the EC Commission, the Council of Ministers, and the European Parliament.

The technical amendment corrects the date on which the EC Council of Ministers approved the directive.

Reasons for change

The Committee has generally viewed the European program to unify the Community by the end of 1992 as a positive development, on both an economic and a political level. The Committee is con-

cerned, however, that the process not be used as an opportunity for Europe to erect or to expand trade barriers. For this reason, the Committee has strongly supported close monitoring of the EC 1992 program by the U.S. Government (both executive and legislative branches) and close oversight of the promulgation of directives and their implementation by the EC member states.

The Committee was first made aware of the proposed television broadcasting directive and its local content requirement in the spring of 1989. Since that time, various members of the Committee have expressed their objections to the local content requirement directly to Members of the European Parliament, and various officials in the European Community as well as the national governments of the member states. The officials were urged to reject the proposed directive, or to amend it so as to eliminate the local content requirement. The fact that the EC Council, at its June and July meetings, did not adopt the directive gave the Committee hope that the Council would, once again, not approve it in October and thus allow the proposal to expire.

In light of the fact, however, that the EC Council on October 3, did approve adoption of the directive, in a form which establishes a majority local content requirement, the committee believes that it is necessary for the House of Representatives to express, in as strong a manner as possible, its extreme displeasure and objections, and to urge the President and the U.S. Trade Representative to take appropriate action in response to the EC's action.

It is the view of the Committee that the directive's local content requirement is not a matter of cultural sovereignty, as some in Europe claim it is, but is an economically motivated measure to protect European industry from fair competition by foreign producers. The Committee rejects arguments by the directive's supporters that the provision is necessary to protect the integrity of European culture, or to regulate objectionable content (such as violence) in TV programming, since the restriction does not apply to the cultural content of TV programs but rather the country of origin of their production. Moreover, the measure does not apply comparable restrictions to European-made programs.

Such a protectionist measure clearly violates the GATT—in particular, Article I relating to most-favored-nation tratment, and Article III relating to national treatment. The Committee supports the Administration's intention to assert U.S. rights under the GATT and to challenge the EC adoption and implementation of this particular directive.

OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

Vote of the committee in reporting the resolution

In compliance with clause 2(l)(2)(B) of rule XI of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the resolution: H.Res. 257 was ordered favorably reported by the Committee on Ways and Means by voice vote.

Oversight findings

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee concludes, on the basis of review of the European Community's "Television Without Frontiers" broadcasting directive, consultations with the Administration and with representatives of the motion picture industry, and discussions among members, that passage of a House resolution is necessary to express the strong objections of the House to the local content requirement contained in the broadcasting directive.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in this resolution.

Budgetary authority and cost estimates

In compliance with clause 7(a) of rule XIII and with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.Res. 257, as reported, does not provide new budget authority or any new or increased tax expenditures.

Inflationary impact statement

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.Res. 257 would have no inflationary impact on prices and costs in the operation of the general economy.

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